

THE UNITED STATES BANKRUPTCY COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In Re

DELORES LANE,

Debtor.

Bankruptcy Case No. 15-16418

DELORES LANE,

Plaintiff,

v.

OCWEN FINANCIAL CORPORATION;  
OCWEN SERVICING, LLC; and  
NATIONWIDE CREDIT, INC.,

Defendants.

Adversary No.

COMPLAINT TO MODIFY PARTIALLY  
UNSECURED SECOND-POSITION LIEN  
ON RENTAL PROPERTY

COMES NOW the Plaintiff/Debtor herein, Delores Lane, by and through her attorneys of record, Wells and Jarvis, P.S., and for her complaint to modify a second-position deed of trust, alleges as follows:

**I. PARTIES**

1. Plaintiff is the Debtor in the above-numbered bankruptcy case, having filed a Chapter 13 bankruptcy petition on October 29, 2015.

2. Defendant Ocwen Financial Corporation through its subsidiary, Ocwen Loan Servicing, LLC, and Nationwide Credit, Inc. ("Nationwide") as servicer, are nominally secured creditors of Debtor holding the second-position deed of trust on her rental property.

## II. JURISDICTION

3. This Court has jurisdiction over this matter under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) pursuant to 28 U.S.C. §§151, 157, and 1334.

4. This adversary proceeding is commenced pursuant to Rule 7001 et seq of the Federal Rules of Bankruptcy Procedure and §§506, 1322 and 1325 of the Bankruptcy Code.

5. Venue in this Court is proper pursuant to 28 U.S.C. §§1408 and 1409.

6. This is a core proceeding pursuant to 28 U.S.C. §157 (b)(2)(K) and (O).

### III. FACTUAL BACKGROUND

7. Plaintiff is the owner of real property located at 4217 50th Ave South, Seattle, WA 98118. This is an investment property which Plaintiff leases to residential tenants. It is legally described as:

LOTS 12 AND 13, BLOCK 95, LAKEWOOD REPLAT OF MAYNARD'S  
LAKE WASHINGTON ADDITION TO THE CITY OF SEATTLE,  
ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 10 OF  
PLATS, PAGE 46, IN KING COUNTY, WASHINGTON.

SITUATED IN THE COUNTY OF KING, STATE OF WASHINGTON

and is hereinafter referred to as "the Rental."

8. Plaintiff values the Rental at \$349,000 based on the most recent King County tax assessment.

9. There are two deeds of trust on the property, recorded under Auditor's File No. 20060417001405 and 20060417001406, respectively. The second secures a Note held by Defendants.

WELLS AND JARVIS, P.S.  
502 Logan Building  
500 Union Street  
Seattle, WA 98101-2332  
206-624-0088 Fax 206-624-0086

1           10.    U.S. Bank, N.A., as trustee, on behalf of the holders of the J.P. Morgan Mortgage  
2 Acquisition Trust 2006-HE2 Asset Backed Pass-Through Certificates, Series 2006-HE2 ("US  
3 Bank") holds the first-position deed of trust and associated note on the Rental. US Bank has  
4 not yet filed a proof of claim in the bankruptcy case, but it has stated in its objection to plan  
5 that "the outstanding balance due on the Note as of filing is approximately \$342,939.04." See  
6 docket number 14, page 2, line 1, in the underlying bankruptcy case.  
7

8           11.    Defendants have not yet filed a proof of claim in this case, but as set forth on the  
9 bankruptcy schedules, approximately \$39,956 was estimated to be owing to Defendants on the  
10 associated note as of the petition date.

11           12.    Given US Bank's secured claim of \$342,939.04 and the Rental's value of  
12 \$349,000, only \$6,060.96 in equity remains to secured Defendants' lien. The remainder is  
13 unsecured.

#### 14                           **VI. BIFURCATION OF SECOND-POSITION LIEN**

15           13.    § 506(a) of the Bankruptcy Code provides that the claim of a creditor secured by  
16 a lien on property of the estate may be an allowed secured claim only "to the extent of the value  
17 of such creditor's interest in the estate's interest in such property." In turn § 506(d) provides  
18 that, subject to two exceptions inapplicable here, "to the extent that a lien secures a claim against  
19 the debtor that is not an allowed secured claim, such lien is void."

20           14.    In the present case, a portion of Defendants' claim is not a secured claim as  
21 defined in §506(a), and thus its claim should be bifurcated into a secured claim of \$6,060.96  
22 ("the Secured Claim") with the remainder allowed only as a general unsecured claim. Pursuant  
23 to § 506(d), the lien amount should be modified to correspond to the Secured Claim, with the  
24 remainder void.

#### 25                           **VII.    REDUCTION OF INTEREST RATE**

26  
27

1           15.     Plaintiff also seeks through this adversary proceeding and in her plan to reduce  
2 the interest rate on Defendants' Secured Claim to a fixed rate of 5%. She believes this proposed  
3 rate is appropriate based on the national prime interest rate and the particular risk factors  
4 involved, and that it will result in full payment of the present value of Defendants' claim.  
5

### 6                               **VIII. MODIFICATION OF LIEN ALLOWED**

7           16.     § 1322(b)(2) of the Bankruptcy Code allows a debtor in her Chapter 13 Plan to  
8 modify "the rights of holders of secured claims, other than a claim secured only by a security  
9 interest in real property that is the debtor's principal residence." In this case, the property is not  
10 Plaintiff's residence, and therefore the prohibition against modifying Defendants' rights is not  
11 applicable and the unsecured portion of the lien may be removed from the Rental and the interest  
12 rate reduced.  
13

14           WHEREFORE, Plaintiff respectfully requests that the Court, pursuant to 11 U.S.C. § §  
15 506(a) and (d), § 1322(b)(2), and § 1325(a)(5)(B)(ii), enter judgment providing:

- 16           1.     That Defendants' second-position deed of trust is partially unsecured; and
- 17           2.     That Defendants' claim in the associated bankruptcy shall be allowed as a secured  
18 claim only in the amount of \$6,060.96, and that the remainder of the claim shall  
19 be treated as an unsecured claim pursuant to Plaintiff's plan in the associated  
20 Chapter 13 bankruptcy; and
- 21           3.     That the interest rate on Defendants' secured claim shall be fixed at 5%; and
- 22           4.     That the lien on the Rental described herein shall be modified in accordance  
23 with the above provisions; and
- 24           5.     For such other and further relief as the Court deems just and proper.  
25

26           DATED this 27<sup>th</sup> day of January, 2016.  
27

Wells and Jarvis, P.S.

By: /s/ Emily Jarvis  
Emily Jarvis, WSBA #41841  
Attorneys for the Plaintiff